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GREGORY W. SMITH (SBN 134385)
LAW OFFICES OF GREGORY W. SMITH
6300 Canoga Avenue, Suite 1590
Woodland Hills, California 91367
Telephone: (818) 712-4000
(213) 385-3400
Telecopier: (818) 712-4004

CHRISTOPHER BRIZZOLARA (SBN 130304)
1528 16th Street
Santa Monica, California 90404
Telephone: (310) 394-6447
Telecopier: (310) 656-7701

Attorneys for Plaintiff
WILLIAM TAYLOR

UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Shepard
Wiley, Judge, Dept. "50"]

NOTICE OF MOTION AND MOTION
FOR DISCOVERY OF PEACE OFFICER
PERSONNEL AND OTHER RECORDS
REGARDING BURBANK POLICE
DEPARTMENT LIEUTENANT ERIC
ROSOFF; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION
OF CHRISTOPHER BRIZZOLARA

Date: September 17, 2010
Time: 8:30 a.m.
Dept.: 50

Action Filed: 9/22/09
FSC: November 5, 2010
Trial: November 16, 2010

8/25

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE
2 CITY OF BURBANK, THE CITY OF BURBANK POLICE DEPARTMENT, AND TO
3 BURBANK POLICE DEPARTMENT LT. ERIC ROSOFF:
4

5 PLEASE TAKE NOTICE that on September 17, 2010 at 8:30 a.m. in the Los Angeles
6 County Superior Court, 111 N. Hill Street, Department 50, Los Angeles, California 90012, plaintiff
7 William Taylor (hereafter "plaintiff") will move for an order that defendant City of Burbank
8 ("defendant") and the Burbank Police Department ("BPD") produce certain records regarding BPD
9 Lieutenant Eric Rosoff and defendant pursuant to *Evidence Code* §§ 1043 and 1045.

10 Plaintiff requests the following:

- 11 1. A complete copy of the BPD internal affairs investigation commenced in or around 2007
12 pertaining to allegations that Eric Rosoff engaged in excessive force in the BPD Police
13 Headquarters against a prisoner being held in the BPD Jail;
- 14 2. All documents pertaining to allegations that BPD Eric Rosoff perpetrated acts of excessive
15 force in the BPD Police Headquarters against a prisoner being held in the BPD Jail;
- 16 3. All documents pertaining to allegations and/or statements by BPD Officer Anthony Valento
17 that Eric Rosoff perpetrated acts of excessive force in the BPD Police Headquarters against a
18 prisoner being held in the BPD Jail;
- 19 4. All documents pertaining to allegations and/or statements by any agent and/or employee
20 of the City of Burbank and/or the BPD that Eric Rosoff perpetrated acts of excessive force in the
21 BPD Police Headquarters against a prisoner being held in the BPD Jail;
- 22 5. All documents pertaining to allegations and/or statements by any person, including but not
23 limited to the victim of the excessive force, that Eric Rosoff perpetrated acts of excessive force
24 in the BPD Police Headquarters against a prisoner being held in the BPD Jail;
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1 6. All documents pertaining to BPD Lt. Omar Rodriguez being involved in any manner in
2 regard to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in
3 the BPD Police Headquarters against a prisoner being held in the BPD Jail;

4 7. All documents pertaining to BPD Sgt. Neil Gunn, Sr. being involved in any manner in regard
5 to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD
6 Police Headquarters against a prisoner being held in the BPD Jail;

8 8. All documents pertaining to Eric Rosoff being involved in any manner in regard to any
9 investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD Police
10 Headquarters against a prisoner being held in the BPD Jail;

11 9. All documents pertaining to BPD Sgt. Mizquez being involved in any manner in regard to
12 any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD
13 Police Headquarters against a prisoner being held in the BPD Jail;

14 10. All documents pertaining to then BPD Deputy Chief Tim Stehr being involved in any
15 manner in regard to any investigation into allegations that Eric Rosoff perpetrated acts of
16 excessive force in the BPD Police Headquarters against a prisoner being held in the BPD Jail;

17 11. All documents pertaining to then BPD Chief of Police Hoefel being involved in any manner
18 in regard to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force
19 in the BPD Police Headquarters against a prisoner being held in the BPD Jail;

20 12. All documents pertaining to former BPD Lt. Jon Murphy being involved in any manner in
21 regard to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in
22 the BPD Police Headquarters against a prisoner being held in the BPD Jail;

23 13. All documents pertaining to any prisoner held in the BPD Jail contending that he was the
24 victim of excessive force by Eric Rosoff;
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1 14. All documents pertaining to BPD Lt. Omar Rodriguez and Sgt. Neil Gunn, Sr. being
2 assigned by BPD Deputy Chief Tim Stehr to conduct any investigation into allegations that Eric
3 Rosoff perpetrated acts of excessive force in the BPD Police Headquarters against a prisoner
4 being held in the BPD Jail;

5 15. All documents pertaining to BPD Lt. Omar Rodriguez and Sgt. Neil Gunn, Sr. being
6 assigned by BPD Chief Hoefel to conduct any investigation into allegations that Eric Rosoff
7 perpetrated acts of excessive force in the BPD Police Headquarters against a prisoner being held
8 in the BPD Jail;

9 16. A complete copy of any and all BPD internal affairs investigations regarding the burglary
10 perpetrated in the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around
11 July, 2007;

12 17. A complete copy of any and all BPD police reports regarding the burglary perpetrated in
13 the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

14 18. All documents pertaining to any communications between former BPD Chief of Police Tim
15 Stehr and plaintiff William Taylor and/or any other agent and/or employee of the City of Burbank
16 regarding investigating the burglary perpetrated of the office of BPD Lt. Omar Rodriguez in the
17 BPD Police Headquarters in or around July, 2007;

18 19. All documents pertaining to any communications between former BPD Chief of Police Tim
19 Stehr and any law enforcement person and/or entity other regarding the burglary perpetrated of
20 the office of BPD Lt. Omar Rodriguez which occurred in the BPD Police Headquarters in or
21 around July, 2007;

22 20. All documents pertaining to any communications between former BPD Chief of Police Tim
23 Stehr and any person and/or entity other regarding the burglary perpetrated of the office of BPD
24 Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

21. All documents evidencing or pertaining to any investigations by the City of Burbank and/or the BPD into allegations that Eric Rosoff burglarized the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

22. All statements, including all audio tapes and transcriptions thereof, taken of any person during any internal affairs or other investigation regarding allegations that Eric Rosoff burglarized the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

23. All documents pertaining to any burglary report, police report, supplemental and/or follow up reports, field evidence technician report, fingerprint evidence, photographs, and any other documents regarding the burglary perpetrated of the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

24. Any City of Burbank electrician's repair report and any other documents pertaining to the repair of any security camera wires and/or other components thereof disabled in the BPD Police Headquarters at the time of the burglary perpetrated of the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

25. Any documents pertaining to the repair of any security camera wires and/or other components thereof disabled in the BPD Police Headquarters at the time of the burglary perpetrated of the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

26. All documents evidencing or pertaining to any complaints by Thor Merich in or around 2007 regarding Eric Rosoff regarding inappropriate conduct regarding Eric Rosoff during an internal affairs investigation regarding BPD Detective Chris Dunn;

27. All employee comment cards and officer index cards referencing and/or evidencing any disciplinary records and/or internal affairs files regarding Eric Rosoff from 2005 to present;

1 28. All personnel or other complaints by any person against Eric Rosoff from 2006 to present;

2 29. All documents evidencing or pertaining to any investigation, and the findings, evidence
3 gathered in connection with, and/or disposition, including any discipline imposed, regarding any
4 investigation conducted by the City of Burbank and/or the Burbank Police Department, and/or their
5 agents or employees regarding any of the above matters, including the entire internal affairs files;

6 30. All documents evidencing or pertaining to any discipline, including but not limited to oral
7 warnings, written warnings, reprimands, suspensions, and termination, imposed by the City of
8 Burbank, the Burbank Police Department, and/or their agents or employees against Eric Rosoff
9 regarding any of the above described matters; and

10 31. All documents evidencing or pertaining to any complaints, any investigations of any such
11 complaints, and the disposition of any such complaints, made by any person against BPD Lt. Eric
12 Rosoff from 2006 to present, including internal complaints, personnel complaints, governmental
13 claims, or civil lawsuits.
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16 The proceedings at which disclosure are sought include the depositions and/or other
17 discovery proceedings, mediation, trial, appeal, and other proceedings in this action. Plaintiff is
18 informed and believes that the City of Burbank and/or the Burbank Police Department are in
19 possession of the requested Pitchess and other documents, and routinely create and maintain
20 such documents in the course of business. The further verified responses and documents are
21 requested to be produced within fifteen (15) days of the date of the hearing of this matter.
22

23 Dated: 8/24/10

24 By: 

25 Gregory W. Smith
26 Christopher Brizzolara
27 Attorneys for Plaintiff
28 WILLIAM TAYLOR

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an
4 employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by
5 plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief
6 of Police of the BPD. Prior to the retaliatory acts and other misconduct perpetrated against him
7 by the defendant, plaintiff had been employed as a sworn peace officer with the BPD for over
8 twenty five years and progressed steadily through the ranks of the BPD to the rank of Deputy
9 Chief of Police, the second highest rank in the BPD.
10

11 Upon information and belief, in or around 2007, BPD Officer Anthony Valento ("Officer
12 Valento") sent an email to BPD Sgt. Dan Yadon ("Sgt. Yadon") at work, stating that he had
13 previously seen a supervisor take a prisoner out of the Burbank Police Department jail and beat
14 him up for information and that the incident had never been investigated. Upon information and
15 belief, Sgt. Yadon was a partner with Lt. Eric Rosoff ("Lt. Rosoff"), in an on-duty evidence
16 business.
17

18 Upon information and belief, Sgt. Yadon subsequently commenced an Internal Affairs
19 investigation regarding Officer's Valento's e-mail, knowing that Sgt. Yadon's friend and business
20 partner Lt. Rosoff would be in charge of the investigation, since Lt. Rosoff was the head BPD
21 Internal Affairs Lieutenant at that time. Upon information and belief, during the ensuing internal
22 affairs investigation, Lt. Rosoff interviewed Officer Valento and ordered him to tell Lt. Rosoff the
23 name of the supervisor who Officer Valento observed beating up a prisoner. Officer Valento
24 responded to the inquiry by stating to Lt. Rosoff and BPD Sgt. Miquez, who was the BPD I.A.
25 Sergeant at the time (as well as currently) that it was Lt. Rosoff himself who beat up the prisoner.
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1 Upon information and belief, Officer Valento related that this beating was perpetrated when Lt.
2 Rosoff was a BPD sergeant, and prior to Rosoff's promotion to lieutenant. Upon information and
3 belief, Officer Valento related that he was with then Sgt. Rosoff when Rosoff took a prisoner out
4 of the jail and into the roll call room at the BPD Police Headquarters and "roughed him up" to
5 obtain some information.
6

7 Upon information and belief, upon being advised that the subject of the internal affairs
8 investigation was infact Lt. Rosoff, Lt. Rosoff and Sgt. Misquez stopped the interview, and
9 consulted with then BPD Deputy Chief Tim Stehr ("Deputy Chief Stehr") (a friend of Lt. Rosoff)
10 and then BPD Chief of Police Hoefel (" Chief Hoefel") (also a friend of Lt. Rosoff.) Upon
11 information and belief, Lt. Rosoff and Sgt. Misquez advised Stehr and Hoefel regarding Officer
12 Valento's statement. Upon information and belief, Lt. Rosoff and Sgt. Misquez ceased their
13 alleged investigation of the matter, and BPD Lt. Omar Rodriguez and BPD Sgt. Neil Gunn, Sr.
14 were instructed to conduct an internal affairs investigation regarding Rosoff beating the prisoner.
15

16 Upon information and belief, Lt. Omar Rodriguez was also instructed to assist Sgt. Misquez
17 in completing an internal affairs investigation regarding Officer Valento allegedly having made
18 inappropriate remarks to Sgt. Yadon, and failing to report the excessive force incident involving
19 Rosoff sooner.

20 Upon information and belief, Lt. Rodriguez and Sgt. Gunn, Sr. (who was the BPD Internal
21 Affairs Sergeant before Sgt. Misquez) commenced investigating Rosoff, and gathered information
22 sufficient to sustain the allegations against Lt. Rosoff. However, upon information and belief,
23 Deputy Chief Stehr continued to pressure Lt. Rodriguez and Sgt. Gunn to pursue the internal
24 affairs investigations regarding Officer Valento in the hopes that Officer Valento would recant his
25 statement to avoid trouble and ultimately exculpate Lt. Rosoff.
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1 Upon information and belief, the victim of the beating administered by Lt. Rosoff verified
2 by phone to Lt. Rodriguez and Sgt. Gunn that he was beaten up in custody by then BPD Sgt.
3 Rosoff. Upon information and belief, the victim of the beating was located in an Arizona jail at the
4 time of this interview and was scheduled to be deported to Guatemala. Upon information and
5 belief, Lt. Rodriguez and Sgt. Gunn conducted this interview, which was audio-taped, via
6 telephone with an Arizona guard standing by with the victim of the beating.
7

8 Upon information and belief, Sgt. Gunn and Lt. Rodriguez told the guard and the victim that
9 they would be in Arizona the next day to do a video-taped interview. Upon information and belief,
10 both the guard and the victim agreed to the video-taped interview and the guard even promised
11 that the victim will not be shipped out for several days. Upon information and belief, the guard
12 promised that he and the victim would be there waiting for Lt. Rodriguez and Sgt. Gunn to conduct
13 the interview.
14

15 Upon information and belief, Lt. Rodriguez told Chief Hoefel and Deputy Chief Stehr that
16 they believe Lt. Rosoff committed this crime and that they had to go to Arizona right away to
17 interview the victim on video, before he is deported. Upon information and belief, Lt. Rodriguez
18 and Sgt. Gunn flew to Arizona the next day, however, when Lt. Rodriguez and Sgt. Gunn arrived
19 at the jail, the victim had mysteriously been shipped out early. Upon information and belief, the
20 guard advised them that the victim of the beating should not have been moved, and could not
21 explain why the victim was no longer being held at his location. Upon information and belief, Lt.
22 Rodriguez and Sgt. Gunn were suspicious that either Deputy Chief Stehr and/or Chief Hoefel were
23 involved in expediting the movement of the victim.
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25 Upon information and belief, Lt. Rodriguez and Sgt. Gunn thereafter returned to Burbank,
26 and gathered more evidence against Rosoff regarding this incident from other interviews and
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1 other investigation. Upon information and belief, even Lt. Rosoff stated in his internal affairs
2 interview that he did not deny using excessive force against the victim, rather stating that he "did
3 not recall" if he used excessive force on this individual.

4 Upon information and belief, Officer Valento ultimately changed his story slightly to protect
5 himself for not previously reporting the incident and stated he saw Rosoff shove the victim into
6 the roll call room while Rosoff made Officer Valento wait outside. Upon information and belief,
7 Officer Valento then stated he heard banging up against the wall and then saw Rosoff and the
8 victim re-appear. Upon information and belief, Officer Valento observed that the victim's clothes
9 were disheveled and learned that Rosoff had obtained the information he allegedly needed.

10 Upon information and belief, when Lt. Rodriguez and Sgt. Gunn checked the BPD Records
11 Bureau for the booking slip for the victim, they discovered that the booking slip, which may have
12 been signed and/or approved by Rosoff, was missing.

13 Meanwhile, upon information and belief, Lt. Rodriguez told Deputy Chief Stehr that they
14 would still be able to prove that Rosoff perpetrated this beating. Upon information and belief,
15 Deputy Chief Stehr responded by claiming that he did not see how it could ever be proven,
16 especially since the suspect/victim was no longer in this country. Upon information and belief,
17 after Lt. Rodriguez told Stehr that he had spoken with the victim and that he had the victim and/or
18 the victim mother's phone number in Guatemala. Upon information and belief, Stehr became
19 angry at Lt. Rodriguez when Lt. Rodriguez advised him that he had spoken to the victim of the
20 beating in Guatemala, and that the victim was willing to return to Burbank to provide a recorded
21 statement regarding this incident. Upon information and belief, Stehr again attempted to
22 dissuade Lt. Rodriguez from sustaining the allegations against Rosoff. Upon information and
23 belief, Stehr even told Lt. Rodriguez that this case needs to be closed as "not sustained", to which
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1 Lt. Rodriguez responded that they could get the victim back in the United States to be interviewed
2 and that they must sustain this case. Upon information and belief, Stehr also told Lt. Rodriguez
3 that the case against Rosoff "just needed to go away".

4 Meanwhile, upon information and belief, Sgt. Misquez went to Lt. Rodriguez's office on
5 several occasions during this time frame and told Lt. Rodriguez this case involving Rosoff is "too
6 messy", "it needs to go away", "it is making Rosoff sick", and that this case "just needs to go
7 away". Upon information and belief, Lt. Rodriguez told Sgt. Misquez the case would not go away
8 and that the allegations would be sustained against Rosoff.

10 Upon information and belief, Lt. Rodriguez and/or Sgt. Gunn prepared their report on their
11 internal affairs investigation of the misconduct by Rosoff, and Lt. Rodriguez called Sgt. Misquez
12 back into his office to say that Lt. Rodriguez's and Sgt. Gunn's portion of this internal affairs
13 investigation was ready and was located in Lt. Rodriguez's office. Upon information and belief,
14 Lt. Rodriguez told Sgt. Misquez that he would meet soon with Sgt. Misquez in Lt. Rodriguez's
15 office to combine their investigations into a final report to submit to Deputy Chief Stehr and/or
16 Chief Hoefel. Upon information and belief, Lt. Rodriguez then observed Sgt. Misquez walk out
17 of Lt. Rodriguez's office and walk directly into Rosoff's office.

19 Upon information and belief, that night (from approximately July 25 to July 26, 2007) the
20 internal affairs files and records, the computer flash drives containing the internal affairs data, and
21 the tapes of the interviews conducted by Lt. Rodriguez and Sgt. Gunn, were all stolen from Lt.
22 Rodriguez's locked office located in the BPD Police Headquarters. Lt. Rodriguez's office was
23 located directly across the hall from Lt. Rosoff's office in the BPD Police Headquarters.

25 Notably, Lt. Rosoff's friend and business partner Sgt. Yadon, the same sergeant who
26 started the initial internal affairs investigation against Officer Valento, was upon information and
27

1 belief also an experienced electrician who would have had easy access to the BPD Police
2 Headquarters electrical box. It is additionally notable that upon information and belief, the BPD
3 Police Headquarter's building security cameras had been disabled before this burglary. Upon
4 information and belief, the disconnected security camera equipment was subsequently discovered
5 by City of Burbank repair personnel and/or others.
6

7 The next morning, Lt. Rodriguez reported the burglary to plaintiff herein (then a BPD
8 Captain), Deputy Chief Stehr, and Chief Hoefel. Plaintiff observed that both Deputy Chief Stehr
9 and Chief Hoefel appeared to exhibit no real stress or concern regarding this burglary perpetrated
10 within the BPD Police Headquarters, and in fact almost appear relieved. However, when Lt.
11 Rodriguez told Deputy Chief Stehr and Chief Hoefel that fortunately he had a back up set up the
12 interview tapes regarding the investigation of Rosoff at his home, plaintiff observed their
13 demeanor change to a worried demeanor.
14

15 Plaintiff then ensured a burglary report regarding this incident was completed, and that an
16 evidence technician took photographs and fingerprints of the crime scene. Upon information and
17 belief, after his office has been burglarized, Lt. Rodriguez installed a hidden camera in his office
18 in the BPD Police Headquarters. Upon information and belief, within approximately one or two
19 weeks, Lt. Rosoff was observed on tape going into Lt. Rodriguez's office in for no apparent
20 purpose, and appeared to be looking around the office.
21

22 Plaintiff contends in this action that Lt. Rosoff burglarized Lt. Rodriguez's office and stole
23 the internal files, flash drive, and tape recorded interviews regarding the excessive force
24 investigation against Rosoff. It should be noted that in addition to being the Internal Affairs
25 Lieutenant at the time, Lt. Rosoff was also the Lieutenant in charge of all of the
26 building/construction/maintenance related matters, and upon information and belief had a special
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1 building master key allowing him access to the various offices in the BPD Police Headquarters.

2 In or around November, 2007, plaintiff prepared a memorandum which was submitted to
3 then BPD Chief of Police Tim Stehr ("Stehr") requesting that an outside agency be appointed to
4 investigate the burglary of internal affairs files and other materials regarding Rosoff which had
5 been located in the office of BPD Lieutenant Rodriguez. In response, Chief Stehr angrily ordered
6 plaintiff to destroy the memorandum he had prepared, and to delete the conclusion from the
7 investigation conducted by Lieutenant Rodriguez.
8

9 In or around April, 2009, plaintiff informed City of Burbank City Manager Michael Flad
10 ("Flad") that documents concerning an excessive force investigation against the BPD had been
11 burglarized from Lieutenant Rodriguez's office, and that Chief Stehr was attempting to cover up
12 the burglary. On or about April 30, 2009, plaintiff reiterated many of the same concerns to Flad.
13 Plaintiff also reiterated many of the same concerns to Burbank City Councilwoman Martha Ramos
14

15 From in or around April 2008 through May 4, 2009, plaintiff, then the Deputy Chief of Police
16 of the Burbank Police Department, complained on at least eight different occasions to Chief Stehr
17 that minority officers in the BPD were being subjected to discrimination, and were being unjustly
18 targeted for termination. In or around April, 2009, on at least two occasions, plaintiff reported to
19 Burbank City Councilwoman Marsha Ramos, that he believed that minority officers in the BPD
20 were being subjected to discrimination by the BPD by targeting them for unjust termination. In or
21 about April, 2009, plaintiff reported to Burbank City Manager Flad on at least two occasions that
22 he believed that minority officers in the BPD were being subjected to discrimination by the BPD.
23

24 Thereafter, on or about May 4, 2009, in retaliation for his whistleblowing activities protected
25 pursuant to *Labor Code* Section 1102.5 and protected activities in reporting and protesting
26 discrimination in violation of FEHA against other BPD employees, plaintiff was demoted from the
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1 rank of Deputy Chief of Police to the rank of Captain. Further, on or about January 21, 2010,
2 plaintiff was placed on involuntary leave by the BPD for specious and unfounded allegations of
3 misconduct.

4 On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or
5 about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code*
6 Section 1102.5 with the defendant.

7 On or about September 17, 2009, defendant sent plaintiff, via his counsel, a letter and a
8 memorandum purporting to set forth the alleged internal affairs charges against plaintiff. On or
9 about September 30, 2009, plaintiff was interrogated by defendant regarding these alleged
10 charges. On or about June 11, 2010, plaintiff was terminated from his employment by defendant
11 based upon specious and unfounded allegations of misconduct.

12 Plaintiff contends that this burglary was committed by Lt. Rosoff in order to obstruct the
13 investigation into Rosoff's previous beating of the prisoner in the BPD jail. Plaintiff contends that
14 his whistleblowing activities in regard to the beating by Rosoff, the subsequent burglary by Rosoff,
15 and the attempts by former BPD Chief Stehr and other agents and/or employees of defendant to
16 cover-up the beating and the burglary were a motivating reason for the adverse employment
17 actions which have been perpetrated against him.

18
19
20 **II. PLAINTIFF AND HIS COUNSEL SHOULD BE PROVIDED THE INTERNAL AFFAIRS**
21 **STATEMENTS AND OTHER DOCUMENTS REGARDING THE INCIDENTS AT ISSUE**
22 **IN ORDER TO: A) CORROBORATE THAT PLAINTIFF ENGAGED IN ACTIVITIES**
23 **PROTECTED BY LABOR CODE SECTION 1102.5; B) CORROBORATE THAT LT.**
24 **ROSOFF ENGAGED IN CONDUCT THAT VIOLATED STATE AND/OR FEDERAL LAW,**
25 **INCLUDING BUT NOT LIMITED TO BEATING A PRISONER AND BURGLARIZING THE**
26 **OFFICE OF LT. RODRIGUEZ; C) ESTABLISH THAT PLAINTIFF WAS SUBJECTED TO**
27 **RETALIATION BY DEFENDANT AS PROHIBITED BY LABOR CODE SECTION 1102.5;**
28 **D) REBUT DEFENDANT'S ALLEGED REASON FOR TAKING THE ADVERSE ACTIONS**
AT ISSUE AGAINST PLAINTIFF; E) AND TO ALLOW PLAINTIFF AND PLAINTIFF'S
COUNSEL TO PREPARE FOR DEPOSITIONS AND TRIAL, AND TO BE ABLE TO
IMPEACH THE TESTIMONY AND REFRESH THE RECOLLECTIONS OF WITNESSES,

1 **AS HAS BEEN SPECIFICALLY FOUND PROPER IN THE HAGGERTY V. SUPERIOR**
2 **COURT CASE**

3 In *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1089, the court specifically held
4 that disclosure pursuant to the Pitchess procedure of internal affairs investigation reports and
5 other investigative materials regarding the incident at issue in the civil case against a deputy
6 sheriff, including internal affairs interviews, transcripts, and other data, was proper. Here,
7 similarly, the Court should order the production of all relevant reports, investigative materials,
8 interviews, transcripts, and other data regarding the investigation and disposition of any
9 complaints of misconduct allegedly involving plaintiff.
10

11 Here, as in *Haggerty v. Superior Court*, *supra*, 17 Cal.App. 4th at 1089 - 1091, the facts
12 gleaned from the internal investigations at issue are directly relevant to the matters at issue in the
13 lawsuit. Moreover, as in *Haggerty*, the requested discovery is important, not only for determining
14 the events that occurred during the incidents, but also for plaintiff's counsel to prepare effective
15 cross-examination of defense witnesses, including to impeach witnesses whose testimony at trial
16 differs from statements made to the investigating officers and/or to refresh the recollections of
17 these witnesses. (See *People v. Hustead* (1999) 74 Cal.App.4th 410, 417; see also, *People v.*
18 *People v. Memro* (1985) 38 Cal.3d 658, 677 ["one legitimate goal of [*Pitchess*] discovery is to
19 obtain information 'for possible use to impeach or cross-examine an adverse witness.]" See also,
20 *Garden Grove Police Dept. v. Superior Court* (2001) 89 Cal.App.4th 430, 433.
21

22 Plaintiff is therefore entitled to the requested information not only to use as substantive
23 evidence to establish that defendant's alleged reasons for the adverse employment actions at
24 issue are pretextual, but also to use to impeach the testimony and/or refresh the recollections of
25 defense and other witnesses. As in *Haggerty*, the investigations at issue concern the very
26 incidents that are the subject of the civil claim. Additionally, as in *Haggerty*, the privacy concerns
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1 of defendant and its employees are diminished because they are the persons and/or entities
2 whose conduct is at issue in the litigation, and the requested internal investigation records
3 concern their actions that are alleged to be wrongful and will be fully litigated at trial.

4 Because of the direct relevance of the information, courts have recognized that the law
5 enforcement records of the investigations of the matters at issue in the case are discoverable and
6 have never imposed any special limitations on this disclosure if the requested discovery otherwise
7 meets the statutory criteria. (See *Robinson v. Superior Court* (1978) 76 Cal.App.3d 968, 978 -
8 "[a]ll statements made by percipient witnesses and witnesses ... related to the incident in question
9 ... are discoverable under the standards set forth in *Pitchess*" ; see also *People v. Alexander*
10 (1983) 140 Cal.App.3d 647, 659, disapproved on another point in *People v. Swain* (1996) 12
11 Cal.4th 593.
12

13 Further, the *Haggerty* court also rejected the contention that the disclosure of relevant
14 internal affairs records would have a chilling effect on every law enforcement agency's ability to
15 conduct an uninhibited, thorough and candid analysis of a complaint, finding such concerns
16 speculative. The court noted that the question of whether police investigation records are
17 discoverable has been unequivocally answered in the affirmative by the Legislature in enacting
18 the *Pitchess* statutory scheme, and that the *Pitchess* "legislation was intended to balance the
19 need of criminal defendants [and civil litigants] to relevant information and the legitimate concerns
20 for confidentiality of police personnel records." *People v. Breaux* (1991) 1 Cal.4th 281, 312. The
21 court held that in balancing these interests, the Legislature made a decision that relevant evidence
22 contained in a personnel file, including internal investigation records and reports, should be
23 disclosed upon a proper showing of materiality and relevance, and did not provide any blanket
24 exceptions to the discoverability of such reports, particularly in the civil context. *Haggerty v.*
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1 *Superior Court, supra*, 17 Cal.App. 4th at 1091 - 1092.

2 Here, a plausible foundation exists to conclude that plaintiff was subjected to retaliation by
3 defendant for engaging in activities protected by *Labor Code* Section 1102.5 and FEHA. The
4 information and documents sought are directly relevant and material to plaintiff's contentions that:
5 a) plaintiff engaged in activities protected by *Labor Code* Section 1102.5 (i.e., reported and
6 opposed the illegal conduct of Rosoff and the defendant, and attempted to file and/or filed a
7 complaint, testified, or assisted in investigations regarding such illegal conduct); b) was subjected
8 to adverse employment actions, up to and including termination, for engaging in such protected
9 activities; and c) to establish the reason given for the retaliatory actions by defendant are false,
10 a sham, and simply a pretext for retaliation. As such, the records pertaining to the investigations
11 by defendant of the allegations made against Lt. Rosoff are relevant and material. The
12 information and documents sought should be disclosed to plaintiff. In the alternative, such
13 information and documents should be examined by the court *in camera*, and all evidence relevant
14 to plaintiff's claims should be turned over to plaintiff's counsel.

17 **III. PLAINTIFF IS ENTITLED TO DISCLOSURE OF THE REQUESTED DOCUMENTS**

18 **A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to *Evidence***
19 ***Code* §1043(a) and 1045(a)**

20 *Evidence Code* §1043 and 1045(a) provide that if the personnel records and information
21 contained therein are relevant to the subject matter of the litigation, upon motion by the party
22 seeking the records and information there is a right of access to the records of complaints,
23 investigations of complaints, and discipline imposed as a result of such investigations.

24 *Evidence Code* §1045(a) provides as follows:

25 "(a) Nothing in this article shall be construed to affect the right of access to
26 records of complaints, or investigations of complaints, or discipline imposed as a
27 result of such investigations, concerning an event or transaction in which the peace
28 officer participated, or which he perceived, and the manner in which he performed

1 his duties, provided that such information is relevant to the subject matter involved
2 in the pending litigation. (Emphasis added)

3 This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386,
4 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not limited to facts
5 that may be admissible at trial, but may include facts that could lead to the discovery of admissible
6 evidence. *People v. Memro, supra*, 38 Cal.3d at 681-682; *People v. Husted, supra*, 74
7 Cal.App.4th at 423.

8 Under the statutory scheme, a party seeking discovery of a peace officer's personnel
9 records need only file a written motion describing the type of records sought, supported by
10 "[a]ffidavits showing good cause for the discovery... , setting forth the materiality thereof to the
11 subject matter involved in the pending litigation and stating upon reasonable belief that the
12 governmental agency identified has the records or information from the records." (*Evidence Code*
13 § 1043(b)(3).) This initial burden is a "relatively relaxed standard." *City of Santa Cruz v.*
14 *Municipal Court* (1989) 49 Cal.3d 74, 84. Information is material as defined by *Evidence Code*
15 § 1043(b)(3) if it 'will facilitate the ascertainment of the facts and a fair trial.' "[A] declaration by
16 counsel on information and belief is sufficient to state facts to satisfy the 'materiality' component
17 of that section." *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, 51.

18 In *Santa Cruz v. Municipal Court, supra*, 49 Cal.3d 88 - 89, the California Supreme Court
19 held that personal knowledge is not required by *Evidence Code* 1043(b) and that an affidavit on
20 information and belief is sufficient. The Court found that in the context of Pitchess motions, the
21 Legislature had expressly considered and rejected a requirement of personal knowledge. The
22 Court held that the legislative history, the case law background, and the statutory language all
23 point to the same conclusion: the "materiality" component of *Evidence Code* § 1043(b) may be
24 satisfied by affidavits based on information and belief. (49 Cal.3d at 89.)
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1 In *Abatti v. Superior Court*, *supra*, 112 Cal.App.4th 39, the *Pitchess* motion contained an
2 affidavit of counsel that related statements from other officers that the former officer had been
3 asked to leave, and had been the subject of other complaints, and was labeled a "liability" problem
4 for the department. *Id.* at 46-47. The court considered counsel's affidavit sufficient, even though
5 it merely averred the contents of the counseling memos rather than stating with specificity the
6 evidence which was contained therein. The court reasoned that to require such "specificity" in the
7 *Pitchess* process would place the proponent of the motion in a "Catch-22" position of having to
8 allege with particularity the very information he or she is seeking. *Id.* at 47, fn. 7.

10 **IV. THE INFORMATION AND DOCUMENTS SOUGHT ARE RELEVANT AND**
11 **DISCOVERABLE, AND RELATE DIRECTLY TO DISPUTED ISSUES IN THIS CASE**

12 Relevance is defined by *Evidence Code* § 210, which provides that:

13 "Relevant evidence" means evidence, including evidence relevant to the credibility of a
14 witness or hearsay declarant, having any tendency in reason to prove or disprove any
disputed fact that is of consequence to the determination of the action."

15 Relevance to the subject matter is to be broadly construed and is not limited to relevance
16 to the narrow issues of the case. *Greyhound Corporation v. Superior Court* (1961) 56 Cal.2d 355,
17 378, 390. As set forth above, in the *Pitchess* motion context, a declaration by counsel on
18 information and belief is sufficient to state facts to satisfy the 'materiality' component of *Evidence*
19 *Code* § 1043(a). *Abatti v. Superior Court*, *supra*, 112 Cal.App.4th at 51; *Haggerty v. Superior*
20 *Court*, *supra*, 17 Cal.App. 4th at 1086.

22 Here, there is a reasonable basis to conclude the internal investigation files at issue
23 contain information that are relevant and material to the lawsuit. (See *Robinson v. Superior Court*,
24 *supra*, 76 Cal.App.3d at 977 [noting that the relevancy of an investigation of the incident that is
25 the basis for the lawsuit is "self-evident"]. Indeed, the records requested involve the investigations
26 of the very matters in which plaintiff has asserted he engaged in the protected activities for which
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1 plaintiff contends that he was retaliated against by defendant, and are therefore directly relevant
2 to the allegations in this case. Further, such documents, including the statements taken of
3 witnesses during the internal investigations by defendant, are evidence relevant to the credibility
4 of the witnesses.

5 It is unfair, unjust, and inequitable for defendant and its counsel to have access to this
6 information and materials, to rely upon same in denying plaintiff's allegations, and to utilize same
7 to prepare for deposition and trial, and to deny plaintiff's counsel access to the same information
8 and documents. *Evidence Code* Sections 1043 and 1045 are not intended to provide public
9 entities and law enforcement agencies with an unfair advantage in defending civil actions. A
10 public entity cannot invoke these code sections to withhold evidence relevant to the case. *Garden*
11 *Grove Police Dept. v. Superior Court, supra*, 89 Cal.App.4th at 433; c.f. *People v. Memro, supra*,
12 38 Cal.3d at 679. As the court stated in *Gill v. Manuel* (9th Cir. 1973) 488 F.2d 799, 803,
13 *Evidence Code* §1040 is not "intended to provide a shield behind which law enforcement
14 personnel may seek refuge for possible wrongdoings."
15

16
17 **V. PLAINTIFF HAS DEMONSTRATED GOOD CAUSE FOR THE PRODUCTION OF THE**
18 **REQUESTED INFORMATION AND DOCUMENTS**

19 The declaration submitted herewith contains facts that establish a plausible foundation to
20 conclude that defendant engaged in retaliation against plaintiff. The conduct by Lt. Rosoff was
21 the subject of one or more internal affairs investigations by the defendant. Plaintiff contends that
22 his engaging in protected activities regarding reporting, investigating, and making
23 recommendations in regard to the misconduct by Lt. Rosoff was a motivating reason for defendant
24 engaging in retaliation against him, culminating in the termination of plaintiff's employment with
25 defendant. As such, the facts regarding these matters, which are of consequence to the
26 determination of this action, are disputed between the parties, and the requested information,
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1 documents, and items are relevant and discoverable in regard to such disputed issues.


2 **VI. CONCLUSION**

3 For each of the foregoing reasons, it is respectfully requested that the Court enter an order
4 directing the defendant to produce the records described in this motion for in camera inspection
5 by the Court and subsequent production to plaintiff.
6

7 Dated:

8/24/10

By: _____



Gregory W. Smith
Christopher Brizzolara
Attorneys for Plaintiff

1 **DECLARATION OF CHRISTOPHER BRIZZOLARA**

2 I, Christopher Brizzolara, do declare as follows:

3 1. I am an attorney at law licensed to practice in the State of California and one of the
4 counsel of record for plaintiff herein. This declaration is made in support of plaintiff's motion to
5 discover peace officer personnel records and to compel further verified responses to
6 interrogatories and requests for production. Except where otherwise indicated, I have personal
7 knowledge of the following, and if called to testify regarding same I could and would competently
8 testify thereto.
9

10 2. This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an
11 employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by
12 plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief
13 of Police of the BPD. Prior to the retaliatory acts and other misconduct perpetrated against him
14 by the defendant, plaintiff had been employed as a sworn peace officer with the BPD for over
15 twenty five years and progressed steadily through the ranks of the BPD to the rank of Deputy
16 Chief of Police, the second highest rank in the BPD.
17

18 3. Upon information and belief, in or around 2007, BPD Officer Anthony Valento ("Officer
19 Valento") sent an email to BPD Sgt. Dan Yadon ("Sgt. Yadon") at work, stating that he had
20 previously seen a supervisor take a prisoner out of the Burbank Police Department jail and beat
21 him up for information and that the incident had never been investigated. Upon information and
22 belief, Sgt. Yadon was a partner with Lt. Eric Rosoff ("Lt. Rosoff"), in an on-duty evidence
23 business.
24

25 4. Upon information and belief, Sgt. Yadon subsequently commenced an Internal Affairs
26 investigation regarding Officer's Valento's e-mail, knowing that Sgt. Yadon's friend and business
27 partner Lt. Rosoff would be in charge of the investigation, since Lt. Rosoff was the head BPD
28

1 Internal Affairs Lieutenant at that time. Upon information and belief, during the ensuing internal
2 affairs investigation, Lt. Rosoff interviewed Officer Valento and ordered him to tell Lt. Rosoff the
3 name of the supervisor who Officer Valento observed beating up a prisoner. Upon information
4 and belief, Officer Valento responded to the inquiry by stating to Lt. Rosoff and BPD Sgt. Misquez,
5 who was the BPD I.A. Sergeant at the time that it was Lt. Rosoff himself who beat up the prisoner.
6 Upon information and belief, Officer Valento related that this beating was perpetrated when Lt.
7 Rosoff was a BPD sergeant, and prior to Rosoff's promotion to lieutenant. Upon information and
8 belief, Officer Valento related that he was with then Sgt. Rosoff when Rosoff took a prisoner out
9 of the jail and into the roll call room at the BPD Police Headquarters and "roughed him up" to
10 obtain some information.
11

12 5. Upon information and belief, upon being advised that the subject of the internal affairs
13 investigation was in fact Lt. Rosoff, Lt. Rosoff and Sgt. Misquez stopped the interview, and
14 consulted with then BPD Deputy Chief Tim Stehr ("Deputy Chief Stehr") (a friend of Lt. Rosoff)
15 and then BPD Chief of Police Hoefel ("Chief Hoefel") (also a friend of Lt. Rosoff.) Upon
16 information and belief, Lt. Rosoff and Sgt. Misquez advised Stehr and Hoefel regarding Officer
17 Valento's statement. Upon information and belief, Lt. Rosoff and Sgt. Misquez ceased their
18 alleged investigation of the matter, and BPD Lt. Omar Rodriguez and BPD Sgt. Neil Gunn, Sr.
19 were instructed to conduct an internal affairs investigation regarding Rosoff beating the prisoner.
20

21 6. Upon information and belief, Lt. Omar Rodriguez was also instructed to assist Sgt. Misquez
22 in completing an internal affairs investigation regarding Officer Valento allegedly having made
23 inappropriate remarks to Sgt. Yadon, and failing to report the excessive force incident involving
24 Rosoff sooner.
25

26 7. Upon information and belief, Lt. Rodriguez and Sgt. Gunn, Sr. (who was the BPD Internal
27 Affairs Sergeant before Sgt. Misquez) commenced investigating Rosoff, and gathered information
28

1 sufficient to sustain the allegations against Lt. Rosoff. However, upon information and belief,
2 Deputy Chief Stehr continued to pressure Lt. Rodriguez to pursue the the internal affairs
3 investigations regarding Officer Valento in the hopes that Officer Valento would recant his
4 statement to avoid trouble and ultimately exculpate Lt. Rosoff.

5 8. Upon information and belief, the victim of the beating administered by Lt. Rosoff verified
6 by phone to Lt. Rodriguez and Sgt. Gunn that he was beaten up in custody years earlier by then
7 BPD Sgt. Rosoff. Upon information and belief, the victim of the beating was located in an Arizona
8 jail at the time of this interview and was scheduled to be deported to Guatemala. Upon
9 information and belief, Lt. Rodriguez and Sgt. Gunn conducted this interview, which was audio-
10 taped, via telephone with an Arizona guard standing by with the victim of the beating.
11

12 9. Upon information and belief, Sgt. Gunn and Lt. Rodriguez told the guard and the victim that
13 they would be in Arizona the next day to do a video-taped interview. Upon information and belief,
14 both the guard and the victim agreed to the video-taped interview and the guard even promised
15 that the victim will not be shipped out for several days. Upon information and belief, the guard
16 promised he and the victim would be there waiting for Lt. Rodriguez and Sgt. Gunn to conduct the
17 interview.
18

19 10. Upon information and belief, Lt. Rodriguez and Sgt. Gunn told Chief Hoefel and Deputy
20 Chief Stehr that they believed Lt. Rosoff committed this crime and that they needed to go to
21 Arizona to interview the victim on video, before he was deported. Upon information and belief,
22 Lt. Rodriguez and Sgt. Gunn flew to Arizona the next day, however, when Lt. Rodriguez and Sgt.
23 Gunn arrived at the jail, the victim had mysteriously been shipped out early. Upon information and
24 belief, the guard advised them that the victim of the beating should not have been moved, and
25 could not explain why the victim was no longer being held at his location. Upon information and
26 belief, Lt. Rodriguez and Sgt. Gunn were suspicious that either Deputy Chief Stehr and/or Chief
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1 Hoefel were involved in expediting the movement of the victim.

2 11. Upon information and belief, Lt. Rodriguez and Sgt. Gunn thereafter returned to Burbank,
3 and gathered more evidence against Rosoff regarding this incident from other interviews and
4 other investigation. Upon information and belief, even Lt. Rosoff stated in his internal affairs
5 interview that he did not deny using excessive force against the victim, rather stating that he "did
6 not recall" if he used excessive force on this individual.
7

8 12. Upon information and belief, Officer Valento ultimately changed his story slightly to protect
9 himself for not previously reporting the incident and stated he saw Rosoff shove the victim into
10 the roll call room while Rosoff made Officer Valento wait outside. Upon information and belief,
11 Officer Valento then stated he heard banging up against the wall and then saw Rosoff and the
12 victim re-appear. Upon information and belief, Officer Valento observed that the victim's clothes
13 were disheveled and learned that Rosoff had obtained the information he allegedly needed.
14

15 13. Upon information and belief, when Lt. Rodriguez and Sgt. Gunn checked the BPD Records
16 Bureau for the booking slip for the victim, they discovered that the booking slip, which may have
17 been signed and/or approved by Rosoff, was missing.

18 14. Meanwhile, upon information and belief, Lt. Rodriguez and Sgt. Gunn told Stehr that they
19 would still be able to prove that Rosoff perpetrated this beating, and Stehr responded by claiming
20 that he did not see how it could ever be proven, especially since the suspect/victim was no longer
21 in this country. Upon information and belief, after Lt. Rodriguez told him that he had spoken with
22 the victim and that they had the victim and/or the victim's mother's phone number in Guatemala,
23 Stehr again attempted to dissuade Lt. Rodriguez from sustaining the allegations against Rosoff.
24 Upon information and belief, Stehr even told Lt. Rodriguez that this case needed to be closed as
25 "not sustained", to which Lt. Rodriguez responded that they could bring the victim back in the
26 United States to be interviewed and that they must sustain this case. Upon information and belief,
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1 Stehr also told Lt. Rodriguez that the case against Rosoff "just needed to go away".

2 15. Meanwhile, upon information and belief, Sgt. Misquez went to Lt. Rodriguez's office on
3 several occasions during this time frame and told Lt. Rodriguez this case involving Rosoff is "too
4 messy", "it needs to go away", "it is making Rosoff sick", and that this case "just needs to go
5 away". Upon information and belief, Lt. Rodriguez told Sgt. Misquez the case would not go away
6 and that the allegations would be sustained against Rosoff.
7

8 16. Upon information and belief, Lt. Rodriguez and/or Sgt. Gunn prepared their report on their
9 internal affairs investigation of the misconduct by Rosoff, and Lt. Rodriguez called Sgt. Misquez
10 back into his office to say that Lt. Rodriguez's and Sgt. Gunn's portion of this internal affairs
11 investigation was ready and was located in Lt. Rodriguez's office. Upon information and belief,
12 Lt. Rodriguez told Sgt. Misquez that he would meet with Sgt. Misquez soon in Lt. Rodriguez's
13 office to combine their investigations into a final report to submit up the BPD chain of command.
14 Upon information and belief, Lt. Rodriguez then observed Sgt. Misquez walk out of Lt. Rodriguez's
15 office and walk directly into Rosoff's office.
16

17 17. Upon information and belief, that night (from approximately July 25 to July 26, 2007) the
18 internal affairs files and records, the computer flash drives containing the internal affairs data, and
19 the tapes of the interviews conducted by Lt. Rodriguez and Sgt. Gunn were all stolen from Lt.
20 Rodriguez's locked office located in the BPD Police Headquarters. Upon information and belief,
21 Lt. Rodriguez's office was located directly across the hall from Lt. Rosoff's office in the BPD
22 Police Headquarters.
23

24 18. Upon information and belief, Lt. Rosoff's friend and business partner Sgt. Yadon, the same
25 sergeant who started the initial internal affairs investigation against Officer Valento, was at the
26 time an experienced electrician who would have had easy access to the in the BPD Police
27 Headquarters electrical box. Upon information and belief, the BPD Police Headquarter's building
28

1 security cameras had been disabled before this burglary. Upon information and belief, the
2 disconnection of the security camera equipment was subsequently discovered by City of Burbank
3 and/or other repair and/or persons and/or entities.

4 19. The next morning Lt. Rodriguez reported the burglary to plaintiff herein (then a BPD
5 Captain), Deputy Chief Stehr, and Chief Hoefel. Plaintiff contends in this action that he observed
6 that both Deputy Chief Stehr and Chief Hoefel appeared to exhibit no real stress or concern
7 regarding this burglary perpetrated within the in the BPD Police Headquarters, and in fact almost
8 appeared relieved. Plaintiff contends in this case he observed their demeanor change to a
9 worried demeanor when Lt. Rodriguez told Deputy Chief Stehr and Chief Hoefel that fortunately
10 he had a back up set up the interview tapes regarding the investigation of Rosoff at his home.

11 20. Plaintiff contends in this case that he then ensured a burglary report regarding this incident
12 was completed, and that an evidence technician took photographs and fingerprints of the crime
13 scene.
14

15 21. Upon information and belief, after his office had been burglarized, Lt. Rodriguez installed
16 a hidden camera in his office in the BPD Police Headquarters. Upon information and belief, within
17 approximately one or two weeks, Lt. Rosoff was observed on tape going into Lt. Rodriguez's office
18 for no apparent purpose, and appeared to be looking around the office.
19

20 22. Plaintiff contends in this action that Lt. Rosoff burglarized Lt. Rodriguez's office and stole
21 the internal files, flash drive, and tape recorded interviews regarding the excessive force
22 investigation against him. Plaintiff contends in this action that in addition to being the Internal
23 Affairs Lieutenant at the time, Lt. Rosoff was also the Lieutenant in charge of all of the
24 building/construction/maintenance related matters, and upon information and belief had a special
25 building master key allowing him access to the various offices in the in the BPD Police
26 Headquarters.
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1 23. Plaintiff contends in this action that in or around November, 2007, plaintiff prepared a
2 memorandum which was submitted to then BPD Chief of Police Tim Stehr ("Stehr") requesting
3 that an outside agency be appointed to investigate the burglary of internal affairs files and other
4 materials regarding Rosoff which had been located in the office of BPD Lieutenant Rodriguez.
5 Plaintiff contends that in response, Chief Stehr angrily ordered plaintiff to destroy the
6 memorandum he had prepared, and to delete the conclusion from the investigation conducted by
7 Lieutenant Rodriguez.
8

9 24. Plaintiff contends in this action that in or around April, 2009, plaintiff informed City of
10 Burbank City Manager Michael Flad ("Flad") that documents concerning an excessive force
11 investigation against the BPD had been burglarized from Lieutenant Rodriguez's office, and that
12 Chief Stehr was attempting to cover up the burglary. Plaintiff contends in this action that in or
13 around April, 2009, plaintiff reiterated many of the same concerns to Flad. Plaintiff also contends
14 in this action that plaintiff reiterated many of the same concerns to Burbank City Councilwoman
15 Martha Ramos
16

17 25. Plaintiff contends in this action that from in or around April 2008 through May 4, 2009,
18 plaintiff, then the Deputy Chief of Police of the Burbank Police Department, complained on at least
19 eight different occasions to Chief Stehr that minority officers in the BPD were being subjected to
20 discrimination, and were being unjustly targeted for termination. Plaintiff contends in this action
21 that in or around April, 2009, plaintiff reported to Burbank City Councilwoman Marsha Ramos on
22 at least two occasions, that he believed that minority officers in the BPD were being subjected to
23 discrimination by the BPD by targeting them for unjust termination. Plaintiff contends in this
24 action that in or around April, 2009, plaintiff reported to Burbank City Manager Flad on at least two
25 occasions, that he believed that minority officers in the BPD were being subjected to
26 discrimination by the BPD.
27
28

1 26. Plaintiff contends in this action that thereafter, on or about May 4, 2009, in retaliation for
2 his whistleblowing activities protected pursuant to *Labor Code* Section 1102.5 and protected
3 activities in reporting and protesting discrimination in violation of FEHA against other BPD
4 employees, plaintiff was demoted from the rank of Deputy Chief of Police to the rank of Captain.
5 Further, plaintiff contends in this action that on or about January 21, 2010, plaintiff was placed on
6 involuntary leave by the BPD for specious and unfounded allegations of misconduct.
7

8 27. On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or
9 about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code*
10 Section 1102.5 with the defendant.

11 28. On or about September 17, 2009, defendant sent plaintiff, via his counsel, a letter and a
12 memorandum purporting to set forth the alleged internal affairs charges against plaintiff. On or
13 about September 30, 2009, plaintiff was interrogated by defendant regarding these alleged
14 charges. Plaintiff contends that on or about June 11, 2010, plaintiff was terminated from his
15 employment by defendant based upon specious and unfounded allegations of misconduct.
16

17 29. Plaintiff contends in this cation that this burglary was committed by Lt. Rosoff in order to
18 obstruct the investigation into Rosoff's previous beating of the prisoner in the BPD jail. Plaintiff
19 contends in this action that his whistleblowing activities in regard to the beating by Rosoff, the
20 subsequent burglary by Rosoff, and the attempts by former BPD Chief Stehr and other agents
21 and/or employees of defendant to cover-up the beating and the burglary were a motivating reason
22 for the adverse employment actions which have been perpetrated against him.
23

24 30. As such, the information and documents sought by this motion are directly relevant and
25 discoverable in regard to establishing that: a) the information reported by plaintiff to former BPD
26 Chief of Police Stehr and to Burbank City Manager Flad was credible; b) Rosoff had engaged in
27 the use of excessive force against a prisoner being held in the BPD jail, and subsequently
28

1 engaged in burglarizing the office of Lt. Rodriguez and stealing the internal affairs files and other
2 items relating to the investigation of his perpetrating this beating; c) defendant and its agents
3 and/or employees, including former BPD Chief of Police Stehr and Burbank City Manager Flad
4 engaged in attempting to cover-up and failed to take reasonable steps to investigate and
5 prosecute Rosoff for perpetrating the beating, burglary, and other misconduct, including bringing
6 in an outside law enforcement agency to investigate and/or prosecute same; and d) the
7 defendant's adverse employment actions taken against plaintiff were taken at least in part to
8 retaliate against plaintiff for reporting the misconduct of Rosoff, and to attempt to discredit plaintiff
9 in order to deflect attention away from conduct of former BPD Chief Stehr, Burbank City Manager
10 Flad, and other agents and/or employees of the defendant in attempting to cover up and fail to
11 take any reasonable steps to investigate and/or prosecute the misconduct of Rosoff. Such
12 evidence is also directly relevant and discoverable in regard to plaintiff establishing that the
13 defendant's proffered reasons for the adverse employment actions taken against him culminating
14 in the termination of his employment with defendant are false and pretextual.

17 31. Here, a plausible foundation exists to conclude that plaintiff was subjected to retaliation by
18 defendant for engaging in activities protected by *Labor Code* Section 1102.5 and FEHA. The
19 information and documents sought are directly relevant and material to plaintiff's contentions that
20 the reason given for the retaliatory actions by defendant are false, a sham, and simply a pretext
21 for retaliation. As such, the records pertaining to the investigations by defendant of the allegations
22 made against Rosoff are relevant and material. The information and documents sought should
23 be disclosed to plaintiff. In the alternative, such information and documents should be examined
24 by the court *in camera*, and all evidence relevant to plaintiff's claims should be turned over to
25 plaintiff's counsel.

1 32. Here, there is a reasonable basis to conclude the internal investigation files at issue
2 contain information that are relevant and material to the lawsuit. Indeed, the records requested
3 involve the investigations of some of the very matters which are the basis of plaintiff's cause of
4 action for retaliation in violation of *Labor Code* Section 1102.5, and to defendant's alleged
5 defenses regarding this cause of action, and are therefore directly relevant to the allegations in
6 this case. Further, such documents, including the statements taken of witnesses during the
7 internal investigations by defendant, are evidence relevant to the credibility of the witnesses
8 therein.

10 33. It is unfair, unjust, and inequitable for defendant and its counsel to have access to this
11 information and materials, to rely upon same in denying plaintiff's allegations, and to utilize same
12 to prepare for deposition and trial, and to deny plaintiff's counsel access to the same information
13 and documents. *Evidence Code* Sections 1043 and 1045 are not intended to provide public
14 entities and law enforcement agencies with an unfair advantage in defending civil actions.

16 34. The conduct by Rosoff and others reported and opposed by plaintiff, and which plaintiff
17 contends was a motivating reason for the defendant's retaliatory actions against plaintiff, was the
18 subject of one or more internal affairs investigations by the defendant. Plaintiff contends that the
19 allegations against Rosoff were founded, and the information and documents regarding
20 defendant's investigation of such alleged misconduct will demonstrate that the allegations were
21 founded, and that defendant and its agents and employees attempted to conceal such
22 misconduct, obstruct and impair investigations in regard thereto, and to conceal defendant's
23 failure to take all reasonable steps to investigate and prosecute such misconduct. As such, the
24 facts regarding these matters, which are of consequence to the determination of this action, are
25 disputed between the parties, and the requested information, documents, and items are relevant
26 and discoverable in regard to such disputed issues.

1 35. By means of this motion, we request that the Court compel defendant to produce the
2 following documents for in camera inspection and subsequent production to plaintiff:

3 a. A complete copy of the BPD internal affairs investigation commenced in or around 2007
4 pertaining to allegations that Eric Rosoff engaged in excessive force in the BPD Police
5 Headquarters against a prisoner being held in the BPD Jail;

6
7 b. All documents pertaining to allegations that BPD Eric Rosoff perpetrated acts of excessive
8 force in the BPD Police Headquarters against a prisoner being held in the BPD Jail;

9 c. All documents pertaining to allegations and/or statements by BPD Officer Anthony Valento
10 that Eric Rosoff perpetrated acts of excessive force in the BPD Police Headquarters against a
11 prisoner being held in the BPD Jail;

12 d. All documents pertaining to allegations and/or statements by any agent and/or employee
13 of the City of Burbank and/or the BPD that Eric Rosoff perpetrated acts of excessive force in the
14 BPD Police Headquarters against a prisoner being held in the BPD Jail;

15
16 e. All documents pertaining to allegations and/or statements by any person, including but not
17 limited to the victim of the excessive force, that Eric Rosoff perpetrated acts of excessive force
18 in the BPD Police Headquarters against a prisoner being held in the BPD Jail;

19 f. All documents pertaining to BPD Lt. Omar Rodriguez being involved in any manner in
20 regard to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in
21 the BPD Police Headquarters against a prisoner being held in the BPD Jail;

22 g. All documents pertaining to BPD Sgt. Neil Gunn, Sr. being involved in any manner in regard
23 to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD
24 Police Headquarters against a prisoner being held in the BPD Jail;

1 h. All documents pertaining to Eric Rosoff being involved in any manner in regard to any
2 investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD Police
3 Headquarters against a prisoner being held in the BPD Jail;

4 i. All documents pertaining to BPD Sgt. Mizquez being involved in any manner in regard to
5 any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD
6 Police Headquarters against a prisoner being held in the BPD Jail;

7 j. All documents pertaining to Tim Stehr being involved in any manner in regard to any
8 investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD Police
9 Headquarters against a prisoner being held in the BPD Jail;

10 k. All documents pertaining to then BPD Chief of Police Hoefel being involved in any manner
11 in regard to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force
12 in the BPD Police Headquarters against a prisoner being held in the BPD Jail;

13 l. All documents pertaining to BPD Lt. Jon Murphy being involved in any manner in regard
14 to any investigation into allegations that Eric Rosoff perpetrated acts of excessive force in the BPD
15 Police Headquarters against a prisoner being held in the BPD Jail;

16 m. All documents pertaining to any prisoner held in the BPD Jail contending that he was the
17 victim of excessive force by Eric Rosoff;

18 n. All documents pertaining to BPD Lt. Omar Rodriguez and Sgt. Neil Gunn, Sr. being
19 assigned by BPD Deputy Chief Tim Stehr to conduct any investigation into allegations that Eric
20 Rosoff perpetrated acts of excessive force in the BPD Police Headquarters against a prisoner
21 being held in the BPD Jail;

22 o. All documents pertaining to BPD Lt. Omar Rodriguez and Sgt. Neil Gunn, Sr. being
23 assigned by BPD Chief Hoefel to conduct any investigation into allegations that Eric Rosoff
24

1 perpetrated acts of excessive force in the BPD Police Headquarters against a prisoner being held
2 in the BPD Jail;

3 p. A complete copy of any and all BPD internal affairs investigations regarding the burglary
4 perpetrated in the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around
5 July, 2007;

6
7 q. A complete copy of any and all BPD police reports regarding the burglary perpetrated in
8 the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

9 r. All documents pertaining to any communications between former BPD Chief of Police Tim
10 Stehr and plaintiff William Taylor and/or any other agent and/or employee of the City of Burbank
11 regarding investigating the burglary perpetrated of the office of BPD Lt. Omar Rodriguez in the
12 BPD Police Headquarters in or around July, 2007;

13 s. All documents pertaining to any communications between former BPD Chief of Police Tim
14 Stehr and any law enforcement person and/or entity other regarding the burglary perpetrated of
15 the office of BPD Lt. Omar Rodriguez which occurred in the BPD Police Headquarters in or
16 around July, 2007;

17
18 t. All documents pertaining to any communications between former BPD Chief of Police Tim
19 Stehr and any person and/or entity other regarding the burglary perpetrated of the office of BPD
20 Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

21 u. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
22 the BPD into allegations that Eric Rosoff burglarized the office of BPD Lt. Omar Rodriguez in the
23 BPD Police Headquarters in or around July, 2007;

24
25 v. All statements, including all audio tapes and transcriptions thereof, taken of any person
26 during any internal affairs or other investigation regarding allegations that Eric Rosoff burglarized
27 the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around July, 2007;

1 w. All documents pertaining to any burglary report, police report, supplemental and/or follow
2 up reports, field evidence technician report, fingerprint evidence, photographs, and any other
3 documents regarding the burglary perpetrated of the office of BPD Lt. Omar Rodriguez in the BPD
4 Police Headquarters in or around July, 2007;

5 x. Any City of Burbank electrician's and/or any other person and/or entity's repair report and
6 any other documents pertaining to the repair of any security camera wires and/or other
7 components thereof disabled in the BPD Police Headquarters at the time of the burglary
8 perpetrated of the office of BPD Lt. Omar Rodriguez in the BPD Police Headquarters in or around
9 July, 2007;

10 y. All documents evidencing or pertaining to any complaints by Thor Merich in or around 2007
11 regarding Eric Rosoff regarding inappropriate conduct regarding Eric Rosoff during an internal
12 affairs investigation regarding BPD Detective Chris Dunn;

13 z. All employee comment cards and officer index cards referencing and/or evidencing any
14 disciplinary records and/or internal affairs files regarding Eric Rosoff from 2005 to present;

15 aa. All personnel or other complaints by any person against Eric Rosoff from 2006 to present;

16 bb. All documents evidencing or pertaining to any investigation, and the findings, evidence
17 gathered in connection with, and/or disposition, including any discipline imposed, regarding any
18 investigation conducted by the City of Burbank and/or the Burbank Police Department, and/or their
19 agents or employees regarding any of the above matters, including the entire internal affairs files;

20 cc. All documents evidencing or pertaining to any discipline, including but not limited to oral
21 warnings, written warnings, reprimands, suspensions, and termination, imposed by the City of
22 Burbank, the Burbank Police Department, and/or their agents or employees against Eric Rosoff
23 regarding any of the above described matters; and,
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1 dd. All documents evidencing or pertaining to any complaints, any investigations of any such
2 complaints, and the disposition of any such complaints, made by any person against Eric Rosoff
3 from 2006 to present, including internal complaints, personnel complaints, governmental claims,
4 or civil lawsuits.

5
6 36. The provision of the "names and addresses" of the complainants against the peace officers
7 identified herein is not be a sufficient response, and all documents evidencing and/or pertaining
8 to the complaints, investigative documents regarding the complaints, and disposition of the
9 complaints are requested. The relevance of these documents is substantial and not tangential.
10 These documents are directly relevant and material to establishing plaintiff's allegations that the
11 defendant committed the various retaliatory conduct of which it is accused, and to rebut the
12 alleged denials and affirmative defenses of defendant in this matter.

13
14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed this 24th day of August, 2010, at Santa Monica, California.

17
18
19 
CHRISTOPHER BRIZZOLARA

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is Messenger Express, 5503 Cahuenga Boulevard, Suite 100, North Hollywood, California 91601-2920.

On the date hereinbelow specified, I served true copies of the foregoing document, described as set forth below on the interested parties in this action enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : August 25, 2010

DOCUMENT SERVED : NOTICE OF MOTION AND MOTION FOR DISCOVERY OF PEACE OFFICER PERSONNEL AND OTHER RECORDS REGARDING BURBANK POLICE DEPARTMENT LIEUTENANT ERIC ROSOFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CHRISTOPHER BRIZZOLARA

PARTIES SERVED : SEE ATTACHED SERVICE LIST.

XXX (BY PERSONAL SERVICE) I personally delivered by hand to the offices of the addressee(s).

— (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on August 25, 2010.

(Signature)

Print Name: _____

MESSENGER EXPRESS

SERVICE LIST

WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510

Attention: Chief's Office
Burbank Police Department
200 N. Third Street
Burbank, California 91502

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3)
4 COUNTY OF LOS ANGELES)

5
6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 years of age, and am not a party to the within action; my business address is 6300 Canoga
8 Avenue, Suite 1590, Woodland Hills, California 91367.

9 On the date hereinbelow specified, I served the foregoing document, described as set
10 forth below on the interested parties in this action by placing true copies thereof enclosed in
11 sealed envelopes, at Woodland Hills, addressed as follows:

12 DATE OF SERVICE : August 25, 2010

13 DOCUMENT SERVED : NOTICE OF MOTION AND MOTION FOR DISCOVERY OF PEACE
14 OFFICER PERSONNEL AND OTHER RECORDS REGARDING
15 BURBANK POLICE DEPARTMENT LIEUTENANT ERIC ROSOFF;
16 MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF
17 CHRISTOPHER BRIZZOLARA

18 PARTIES SERVED : Christopher Brizzolara, Esq.
19 1528 16th Street
20 Santa Monica, California 90404

21 XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to
22 **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

23 XXX (STATE) I declare under penalty of perjury under the laws of the State of California that
24 the above is true and correct.

25 — (FEDERAL) I declare that I am employed in the office of a member of the bar of this
26 court at whose direction the service was made.

27 EXECUTED at Woodland Hills, California on August 25, 2010.

28

Selma I. Francia